



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 112 OF 1989 IN THE MATTER OF ESTATE OF

GAICHUHIA MUHINGODECEASED

AND

ANNA WAMUYU MUHINGOAPPLICANT

VERSUS

JOSEPH MURIUKI MUHINGORESPONDENT

RULING

Pursuant to the provisions of section 47 of the law of Succession Act, Annah Wamuyu Muhingo, the Objector/ Applicant, took out the summons dated 28th June 2010 in which she sought for the following orders:

- 1. That both the Respondent's application dated 8th February, 2010 and 9th June, 2010 be dismissed with costs as the same are an abuse of the process of this honourable court.***
- 2. That L.R. KONYU/BARICHO/91 be divided into two equal parts and each to remain with the portion it has been occupying to date.***
- 3. That the costs of this application be borne by the Respondent.***

Annah Wamuyu Muhingo swore an affidavit she filed in support of the summons. The application was served upon the firm of D.M. Baru Advocate, learned advocate for Joseph Muriuki Muhingo, the Petitioner/Respondent herein. The Petitioner/Respondent filed a replying affidavit to oppose the application.

When the application came up for interpartes hearing, neither the Petitioner/Respondent nor his advocate attended court hence the objector/applicant was granted leave to proceed exparte. Of course, the law enjoins me to consider whatever responses were filed despite the petitioner's absence.

The applicant urged this court to give her the orders in view of the fact that the petitioner has not put up a permanent house on the suit land i.e. L.R. No. Konyu/Baricho/91. She alleged that the house standing thereon was put up by one Peter Gachahi Muriuki, a son of the petitioner. It is her contention that the Petitioner/Respondent lied on oath when he deposed that he had put up a permanent building on the land in dispute. The petitioner/Respondent opposed the application claiming the same was vexatious, frivolous and untenable. It is argued that the application was filed in bad faith in that it is meant to have his house demolished since the same lies on the boundary the applicant insists should pass.

The applicant herein has basically invoked the inherent jurisdiction of this court under section 47 of the Law of Succession Act. I have been urged to issue an order to have L.R. No. Konyu/Baricho/91 to be split into two equal portions so that the Petitioner and the Objector occupies the portion they are now occupying. This application i.e. the one dated 28th June 2012 is closely related to the application dated 8th February 2010 in which the Petitioner/Respondent herein seeks for the following orders:

1. ***That the Nyeri District Land Surveyor be compelled to demarcate the suit land and take in consideration the permanent house in land parcel number Konyu/Baricho/91 without affecting the acreage.***
2. ***That the area Agricultural Officer do assess the value of the crops in the portion of the Respondent and the Applicant be compensated to the tune so assessed.***
3. ***That costs of this application be in the cause.***

The aforesaid application was scheduled for hearing on 27th November 2010, which was not an official working day. The record shows that the Objector/Applicant had filed a replying affidavit to oppose the application. A careful perusal of the aforesaid replying affidavit will reveal that the Objector/Applicant has raised the issues she has now raised in the affidavit sworn and filed in support of her summons dated 28th June 2010. It is obvious that the Objector/applicant's complaint raised in the summons dated 28th June 2010 can adequately be addressed and determined within the application dated 8th February 2010. I do not know why the objector/applicant decided to file a fresh application instead of causing the application dated 8th February 2010 to be fixed for hearing instead. The objector's conduct of filing the current application amounts to an abuse of the court process. The same will unnecessarily increase costs and cause a further delay in concluding the dispute. The filing of the application was completely unwarranted and unjustified in the circumstances of this case. Whoever advised the objector/applicant to do what she did, misled her, hence she has herself and her "legal advisers" to blame. I hereby order the summons dated 28th June 2010 to be struck out with costs to the Petitioner/Respondent. The parties are directed to fix the application dated 8th February 2010 and 9th June 2010 for interpartes hearing on priority basis to avoid the matter procrastinating further.

Dated and delivered this 25th day of February 2011.

**J.K. SERGON
JUDGE**

In open court in the presence of Applicant N/A for Respondent.

**J.K. SERGON
JUDGE**